

**CITY OF SAN ANTONIO**  
**AVIATION DEPARTMENT**



**REQUEST FOR QUALIFICATIONS**  
**("RFQ")**

**for**

**Airfield Lighting System Upgrade**  
**at**  
**San Antonio International Airport**

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## **I. BACKGROUND**

The City of San Antonio, Aviation Department wishes to engage the services of a design consultant to develop contract documents for the Airfield Lighting System Upgrade at San Antonio International Airport.

The City of San Antonio ("City") seeks Qualifications from qualified Respondents interested in providing the services as described in this RFQ.

## **II. SCOPE OF SERVICES**

In general, the work will consist of , but not necessarily limited to the replacement of the existing airfield lighting control system with a computerized Airfield Lighting Control System (ALCS) which shall control and maintain the airfield lighting and lighted directional signage systems. In addition, the work effort shall include:

- The installation of equipment to air condition computer room in each electrical vault;
- The replacement of select Constant Current Regulators (CCRs);
- The replacement of Runway 12R TDZ Lighting;
- The replacement of Taxiway Lighting - Taxiway Alpha, Taxiway Romeo & Sierra;
- The installation of new duct bank connecting the two airfield electrical vaults;

These various work elements may be combined into one or more bid packages. Procurement for theses package(s) may include conventional low bid, RFP process or other process which the City may deem as being in its best interest.

The selected respondent will work in concert with the Aviation Department staff in developing detailed scope of services, deliverables and schedules. From this fee negotiations will be conducted in accordance with AC 150-5100-14C using the detailed scope of work to develop man-hours, milestones and the resultant fees. Once the scope and fees have been agreed upon, and before taking City Council action, the SBEDA compliance will be re-evaluated and sub consultant participation confirmed. Any deviations to the SBEDA plan as presented in the interest statement must be cleared through the SBEDA office prior to council action.

## **III. TERM OF CONTRACT**

The term of contract will be negotiated as part of the contract and will be established to be consistent with the procurement and construction duration.

## **IV. RESPONSE REQUIREMENTS**

Respondent's Submission shall include the following items in the following sequence:

- A. RESPONDENT QUALIFICATION GENERAL QUESTIONNAIRE: Completed  
Respondent Qualification General Questionnaire. (Attachment A)

- B. DISCRETIONARY CONTRACTS DISCLOSURE: Completed Discretionary Contracts Disclosure Form. (Attachment B) If Respondent is proposing as a team or joint venture, then all parties to that team or joint venture shall complete and include this form with the response.
- C. LITIGATION DISCLOSURE: Completed Litigation Disclosure Form. (Attachment C) If Respondent is proposing as a team or joint venture, then all parties to that team or joint venture shall complete and include this form with the response.
- D. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) POLICY REQUIREMENTS. Completed SBEDA forms (Attachment D).
- E. DBE POLICY: Completed DBE forms (Attachment E)
- F. DEBARMENT CERTIFICATION (Attachment F)
- G. REFERENCES AND QUALIFICATIONS:
1. Background of Respondent and support personnel, including professional qualifications and length of time working in Respondent's capacity. Include résumés of key personnel identified in the Organizational Chart for services that Respondent proposes to perform.
  2. Relevant experience of Respondent as it relates to the scope of services contemplated by the RFQ.
  3. Specific experience with public entity clients, especially large municipalities. If Respondent has provided services for the City in the past, identify the name of the project and the department for which Respondent provided those services. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.
  4. Other resources, including total number of employees, number and location of offices, number and types of equipment available to support this project.
  5. Respondent shall provide three (3) references, preferably from municipalities, for whom Respondent has provided similar services. Include current phone number for each reference.
  6. If Respondent has had experience in working as a member of a joint venture or team, describe that experience, including the type of project for which the joint venture or team was formed.
- H. SIGNATURE PAGE: Respondent must complete and include Signature Page with response. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the response. Responses signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. (Attachment J)

I. RESPONSE CHECKLIST: Completed response checklist. (Attachment K)

Respondent is expected to examine this RFQ carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THESE DOCUMENTS MAY RESULT IN THE RESPONDENT'S RESPONSE BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

**V. AMENDMENTS TO RFQ**

Changes or amendments to this RFQ may only be made through written addenda issued by the City. Changes or amendments which substantially alter or modify the submittal requirements may, at the City's sole discretion, include provisions to extend the due date.

**VI. SUBMISSION OF RESPONSES**

- A. Respondent shall submit eight (8) copies of the Response, the original signed in ink, in a sealed package, clearly marked on the front of the package Airfield Lighting System Upgrade at San Antonio International Airport. All Responses must be received in the City Clerk's office no later than **4:30 PM Central Time, Friday, October 1, 2004** at the address below. Any Response received after this time shall not be considered.

Mailing Address:

City Clerk's Office, Attn: Aviation Department  
P.O. Box 839966,  
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office, Attn: Aviation Department  
100 Military Plaza  
2<sup>nd</sup> floor, City Hall  
San Antonio, Texas 78205.

Responses sent by facsimile or email will not be accepted.

- B. Response Format: Each Response shall be typewritten and submitted on 8 1/2" x 11" white paper inside a three ring binder. Font size shall be no less than 12 point type. All pages shall be double spaced and printed on one side only. Margins shall be no less than 3/4" around the perimeter of each page. Maximum number pages allowed shall be 50, including required attachments. Each page shall be numbered. Electronic files shall not be included as part of the Response; compact disks and/or computer disks submitted as part of the Response shall not be considered. Each Response must include the sections and attachments in the sequence listed in the Response Requirements Section, and each section and attachment must be

indexed and divided by tabs and indexed in a Table of Contents page. Failure to meet the above conditions may result in disqualification of the Response.

- C. Respondents who submit responses to this RFQ shall correctly reveal, disclose, and state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nick-names, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the Response.

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the signature page of its Response, the Aviation Director of shall have the discretion, at any point in the contracting process, to suspend consideration of the Response.

- D. All provisions in Respondent's Response, shall remain valid for one hundred twenty (120) working days following the deadline date for submissions or, if a Response is accepted, throughout the entire term of the contract.
- E. All Responses become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- F. Any cost or expense incurred by the Respondent that is associated with the preparation of the Response, the Pre-Response conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

## **VII. RESTRICTIONS ON COMMUNICATION**

Once the RFQ has been released, Respondents are prohibited from communicating with City staff or City officials regarding the RFQ or Responses, with the following exceptions:

- A. Questions concerning this RFQ shall be directed, in writing only, to the Aviation Department, Attn: Leslie A. Heinen, Jr., P.E. at 9800 Airport Blvd., San Antonio, Texas 78216. Verbal questions and explanations are not permitted other than as described by this section and during interviews, if any. It is suggested that all questions be sent by certified mail, return receipt requested; however, electronic submissions by facsimile will be accepted at (210) 207-3544. No inquiries or questions will be answered if received after **2:00 P.M.** on,

**September 22, 2004**, to allow ample time for distribution of answers and/or amendments to this RFQ. Respondents wishing to receive copies of the questions and their responses must notify the City's Contact Person in writing prior to the date and time the questions are due.

- B. Respondent shall not contact City employees nor Officers before an award has been made, except as set out herein. Violation of this provision by Respondent or his agent may lead to disqualification of his Response from consideration.
- C. The City reserves the right to contact any Respondent for clarification after responses are opened and/or to further negotiate with any Respondent if such is deemed desirable by City.

### **XIII. EVALUATION CRITERIA**

The City will conduct a comprehensive, fair and impartial evaluation of all Responses received in response to this RFQ. The City may appoint a selection committee to perform the evaluation. Each Response will be analyzed to determine overall responsiveness and qualifications under the RFQ. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If the City elects to conduct interviews, Respondents may be interviewed and re-scored based upon this same criteria, or other criteria to be determined by the selection committee. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council.

Evaluation criteria:

Design and Creative Ability of Firm/Team	15
Construction Document & Technical Capability of Firm/Team	15
Construction Administration Capability of Firm/Team	15
Capability of Subconsultants	15
Firm's Suitability Familiarity for Project Type/Scope	15
Special Considerations	5
SBEDA	20

#### **A. Small Business Economic Development Advocacy (SBEDA) Requirements (20%)**

- 1. Local Business Enterprise.
- 2. Historically Underutilized Enterprise (HUE)
- 3. Compliance with SBEDA Policy.

### **IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS**

- A. City reserves the right to award one, more than one or no contract(s) in response to this RFQ.

- B. The Contract, if awarded, will be awarded to the Respondent(s) whose Response(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.
- C. City may accept any Response in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFQ on the part of City. However, final selection of a Respondent is subject to City Council approval.
- D. City reserves the right to accept one or more Responses or reject any or all Responses received in response to this RFQ, and to waive informalities and irregularities in the Responses received. City also reserves the right to terminate this RFQ, and reissue a subsequent solicitation, and/or remedy technical errors in the RFQ process.
- E. City will require the selected Respondent to execute the contract with the City, prior to City Council award. No work shall commence until City signs the contract documents and Respondent provides the necessary evidence of insurance as required in this RFQ and the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- F. This RFQ does not commit City to enter into a Contract, award any services related to this RFQ, nor does it obligate City to pay any costs incurred in preparation or submission of a Response or in anticipation of a contract.
- G. If selected, Respondent will be required to comply with the Insurance and Indemnity Requirements established herein.
- H. Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent; child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officers nor employees of the City, as defined in Part B, Section 10 of the City’s Ethics Code. (Discretionary Contracts Disclosure – Attachment B)



- I. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.

## **X. SCHEDULE OF EVENTS**

Following is a list of **projected dates** with respect to this RFQ:

RFQ Solicitation Period	<u>34 Days</u>
Final Questions Accepted	<u>September 22, 2004</u>
Responses Due	<u>October 1, 2004</u>
Evaluations Conducted	<u>60 Days</u>

## **XI. ADDITIONAL PROVISIONS**

### **OWNERSHIP AND LICENSES**

In accordance with Texas law, Respondent acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Respondent pursuant to this Contract shall be the subject of any copyright or proprietary claim by Respondent.

The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law including an ordinance, or in the transaction of official business.

Respondent acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFQ, will belong to and be the property of City. Respondent, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Respondent, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

In accordance herewith, Respondent, if selected, agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

### **CERTIFICATIONS**

Respondent warrants and certifies that Respondent and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

**ATTACHMENT A**

**RESPONDENT QUALIFICATION GENERAL QUESTIONNAIRE**

## ATTACHMENT A

### RESPONDENT QUALIFICATION GENERAL QUESTIONNAIRE

1. Name/Name of Agency/Company: \_\_\_\_\_
2. Address: \_\_\_\_\_  
\_\_\_\_\_
3. Telephone/FAX: \_\_\_\_\_
4. Does your Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its response?  
Yes\_\_\_\_ No\_\_\_\_
5. Is your Company authorized and/or licensed to do business in Texas?  
Yes\_\_\_\_ No\_\_\_\_
6. Where is the Company's corporate headquarters located? \_\_\_\_\_
7. a. Does the Company have an office located in San Antonio, Texas?  
  
Yes\_\_\_\_ No\_\_\_\_  
  
b. If the answer to the previous question is "yes", how long has the Company conducted business from its San Antonio office?  
  
\_\_\_\_ (years) \_\_\_\_ (months)  
  
c. State the number of full-time employees at the San Antonio office. \_\_\_\_\_
8. a. If the Company does not have a San Antonio office, does the Company have an office located in Bexar County, Texas?  
  
Yes\_\_\_\_ No\_\_\_\_  
  
b. If the answer to the previous question is yes, how long has the Company conducted business from its Bexar County office?  
  
\_\_\_\_ (years) \_\_\_\_ (months)  
  
c. State the number of full-time employees at the Bexar County office. \_\_\_\_\_

9. Has the Company or any of its principals been debarred or suspended from contracting with any public entity? Yes\_\_\_\_ No\_\_\_\_

If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension. \_\_\_\_\_

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10. Indicate person whom the City may contact concerning your response or setting dates for meetings.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

FAX: \_\_\_\_\_

Email: \_\_\_\_\_

11. Surety Information

Have you or the Company ever had a bond or surety canceled or forfeited? Yes ( ) No ( ).  
If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture. \_\_\_\_\_

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12. Bankruptcy Information

Have you or the Company ever been declared bankrupt or filed for protection from creditors under state or federal proceedings? Yes ( ) No ( )  
If yes, state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets. \_\_\_\_\_

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13. Provide any other names under which your business has operated within the last 10 years.

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**ATTACHMENT B**

**DISCRETIONARY CONTRACTS DISCLOSURE FORM**

# City of San Antonio

## Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

*This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a response for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

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(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

--

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

--

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

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<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

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### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a response for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:

### Disclosures in Responses

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

<b>Signature:</b>	<b>Title:</b>  <b>Company:</b>	<b>Date:</b>

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.



**ATTACHMENT C**  
**LITIGATION DISCLOSURE FORM**

## ATTACHMENT C

### LITIGATION DISCLOSURE

**Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your response from consideration or termination of the contract, once awarded.**

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One

YES

NO

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Circle One

YES

NO

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One

YES

NO

**If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your response.**

**ATTACHMENT D**

**SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY  
(SBEDA) POLICY**

**ATTACHMENT D**  
**SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY**  
**(SBEDA) POLICY**

Small Business Economic Development Advocacy (SBEDA) Policy Requirements

It is the policy of the City of San Antonio to involve qualified small business and local business enterprises to the greatest extent feasible in the City's professional service and other discretionary contracts. Pursuant to Ordinance #69403, the City of San Antonio, its employees, contractors and subcontractors shall not discriminate on the basis of race, color, religion, national origin, sex, age, or handicap in the award and performance of contracts. Violation of this ordinance is a criminal offense and subject to penalty.

On this contract, the City has established the following contracting goals for services that have subcontracting opportunities:

Minority-Owned Business Enterprise (MBE):	32.5%
Women-Owned Business Enterprise (WBE):	13.0%
African-American-Owned Business Enterprise (AABE):	2.3%
Small Business Enterprise (SBE):	45.0%

Please note that a business could be classified in each category and therefore their utilization could be counted in each category of goals. For example, Company X submits response as a prime contractor for \$250,000 of services of which \$81,250 is subcontracted to Company Z. Company X retains \$168,750 of the contract. Company X is classified as local SBE, and Company Z is certified as a AABE, WBE, MBE and SBE. Goal compliance will be evaluated as follows:

Contract Amount: \$250,000

MBE =	\$81,250 or 32.5%
WBE =	\$81,250 or 32.5%
AABE =	\$81,250 or 32.5%
SBE =	\$250,000 or 100%

Company Z's \$81,250 subcontract counts towards MBE/WBE/AABE and SBE goals. Company X's \$168,750 balance counts towards the SBE goal. MBEs and WBEs submitting responses as a prime contractor may count their status as such towards the appropriate goal. However, compliance with other goals (i.e., AABE, SBE etc.) is required.

Responses shall include a Good Faith Effort Plan (GFEP). The GFEP shall include specific documentation, as outlined in **SBEDA Form 117C, "Good Faith Effort Plan for Subcontractors and Professional Services" (ATTACHED)**, that demonstrates a commitment by the proposer, to utilize minority and women business enterprises in a percentage which equals

or exceeds the above goals. **Any response that has subcontracting opportunities and does not include the GFEP shall be declared non-responsive.**

A firm may count toward the above goals a portion of the total dollar value of a contract with a joint venture equal to the percentage of MBE, WBE, AABE, or SBE participation in the joint venture. The MBE, WBE, or AABE must be responsible for a clearly defined portion of the work to be performed, equal to a share in the ownership, control, management, responsibility, risks, and profits of the joint-venture.

Submittals shall include **SBEDA Form 101 List of Subcontractors (ATTACHED)**, which identifies the particular firms to be utilized in performing the contract, specifying for each the dollar value of the participation, the type of work to be performed, and such information as may reasonably be required to determine the responsiveness of the submittal. Only companies certified as MBE, WBE, or DBE by the City through the South Central Texas Regional Certification Agency (SCTRCA) can be applied towards the contracting goals. If not certified, please call the SCTRCA at (210) 227-4722. Proof of certification must be submitted utilizing, in part or in whole, a MBE or WBE firm.

#### **LOCAL AND DISADVANTAGED BUSINESS ENTERPRISE PERFORMANCE**

Contractors will be evaluated based on the level of Local and Disadvantaged Business Enterprise (DBE) Performance. Credit will be given to submittals as follows:

A. Classification of the team or primary submitter as a local business.

##### **For Locally Headquartered Businesses:**

Ten percentage (10%) points if the business is headquartered in the corporate limits of the City of San Antonio or the San Antonio ETJ for more than one year.

**or**

Four percentage (4%) points if the business is headquartered in Bexar County for more than one year

##### **For Local Branch Offices:**

Six percentage (6%) points for a branch office of a non-headquartered business located within the corporate limits of the City of San Antonio or the San Antonio ETJ for more than one year.

**or**

Two percentage (2%) points if the branch office is located in Bexar County for more than one year.

In the cases of joint ventures or subcontractor relationships between local and out-of-town firms, the submittal will be given credit based on the percentage of local participation.

B. Designation of the team or primary submitter as a HUE.

Five percentage (5%) points for Historically Underutilized Enterprises.

A business meeting the definition of a HUE shall receive 5 percentage points. In order to receive this designation, a company must be certified the South Central Texas Regional Certification Agency.

In the cases of joint ventures or subcontractor relationships between DBE and non-DBE firms, the submittal will be given credit based on the percentage of DBE participation.

- C. Small Business Economic Development Advocacy policy compliance.  
Five percentage (5%) points for compliance with the Small Business Economic Development Advocacy policy.

Interested contractors are encouraged to contact the Economic Development Department for pertinent information regarding the City's SBEDA Policy. For information call the SBEDA Office at (210) 207-3915, FAX: (210) 207-3909.

#### ATTACHMENTS

Rev. 1/23/98

## GOOD FAITH EFFORT PLAN

NAME OF COMPANY: \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

1. Indicate all MBE-WBE-AABE-SBE subcontractors proposed for this contract. (Use additional sheets as needed.)

[illegible]

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

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3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

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4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

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5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

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6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

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*Good Faith Effort Plan*

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	HUE (Y/N)	REASON FOR REJECTION

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.
9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

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10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

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SIGNATURE OF AUTHORIZED OFFICIAL

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TITLE OF OFFICIAL

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DATE

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PHONE

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**FOR CITY USE**

Plan Reviewed By:\_\_\_\_\_

Recommendation:                      Approval\_\_\_\_\_                      Denial\_\_\_\_\_

Action Taken:                              Approved\_\_\_\_\_                      Denied\_\_\_\_\_

\_\_\_\_\_  
DIRECTOR OF ECONOMIC DEVELOPMENT

# REQUEST FOR APPROVAL OF CHANGE TO ORIGINAL AFFIRMED LIST OF SUBCONTRACTORS/SUPPLIERS

The Contractor, \_\_\_\_\_, performing work on a project known as \_\_\_\_\_  
\_\_\_\_\_ requests approval of the following addition(s) and/or deletion(s) on the Affirmed List of  
Subcontractors, as originally submitted as part of the BID/PROPOSAL on the above named project:

## CHANGES

ADD	DELETE	NAME	MBE-WBE-AABE-SBE (Y/N)	PERCENT AND DOLLAR AMOUNT OF CONTRACT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

## JUSTIFICATION

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Rev. 12/02

## AFFIRMATION

*THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE  
AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE  
ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

Name & Title of Authorized Official: \_\_\_\_\_

Signature: \_\_\_\_\_

Approved: \_\_\_\_\_

DIRECTOR OF AVIATION

Approved: \_\_\_\_\_

DIRECTOR OF ECONOMIC DEVELOPMENT

Request for Approval of Change  
Rev.3/3/03

**ATTACHMENT E**

**DBE PROGRAM OVERVIEW AND REQUIREMENTS**

**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)  
DBE PROGRAM - 49 CFR PART 26  
PROGRAM OVERVIEW AND REQUIREMENTS**

**AIRFIELD LIGHTING SYSTEM UPGRADE AT SAN ANTONIO  
PROJECT: INTERNATIONAL AIRPORT**

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*OBJECTIVE/POLICY STATEMENT*

The San Antonio International Airport has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26. The City of San Antonio has received federal financial assistance from the Department of Transportation and as a condition of receiving this assistance, the City of San Antonio has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the San Antonio International Airport that it will ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT assisted contracts. It is our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist in the development of firms that can compete successfully in the market place outside the DBE Program.

**DBE OBLIGATION**

The San Antonio International Airport and/or its contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard the San Antonio International Airport and its contractors shall not discriminate on the basis of race, color, national origin, gender, or disability in the award and performance of DOT-assisted contracts.

*DBE GOAL*

The DOT regulations require that overall project goals be calculated consistent with the process in Section 26.45 for setting goals under DOT assisted projects (49 CFR Section 23.95 [a]). The San Antonio International Airport has applied the two-step process as outlined in 49 CFR Section 26.45. This two-step process consists of determining the relative availability of DBEs ready, willing, and able in the local market area ("base figure"). Step 2 is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the City would expect in the absence of discrimination based on past participation. The local market area is defined as Bexar County, Texas, unless otherwise noted.

A firm submitting a proposal for this project is asked to make good faith efforts to meet or exceed the goal for DBE participation. All respondents that do not meet the goals set for this project are subject to

good faith efforts review. The City will evaluate the respondent's good faith efforts to achieve DBE goals.

**THE DBE GOAL FOR THIS PROJECT IS 10.5%.**

**DEFINITIONS**

*Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.*

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
  - (i) One concern controls or has the power to control the other; or*
  - (ii) A third party or parties controls or has the power to control both; or*
  - (iii) An identity of interest between or among parties exists such that affiliation may be found.**
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE Program.*

*Commercially Useful Function—a DBE is considered to perform a commercially useful function when it:*

- (1) Engages in meaningful work that provides for a performance of a distinct element of the contract where that distinct element of work is worthy of the dollar amount to be awarded to the DBE; or,*
- (2) Carries out its responsibilities by actually performing, managing, and/or supervising the work involved.*

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

*Contractor* means one who participates, through a contract or subcontract (at any tier) in a DOT assisted highway, transit, or airport program.

*Department or DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

*Disadvantage business enterprise or DBE* means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

*DOT-assisted contract* means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

*Good faith efforts* mean efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

*Joint Venture* means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

*Personal Net Worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

*Principal place of business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

*Race-conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

*Race-neutral* measure or program is one that is, or can be, used to assist all small businesses. For the purpose of this part, race-neutral includes gender neutrality.

*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 30 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia or Hong Kong;
  - (v) “Subcontinent Asian American,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (vi) Women;
  - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

*Sponsor* means the recipient of an FAA grant.

## **CERTIFICATION**

1. A proposer shall submit to the City a copy of the DBE Certification Affidavit, for all DBE firms utilized or proposed to be utilized as subcontractors or suppliers in the performance of work on said project with the Letter of Intent (**DBE Form 2**).
2. The Certification Affidavit must be from a firm that has been certified by one of the six certifying agencies of the Texas Unified Certification Program (TUCP). The six agencies are: Texas Department of Transportation (TxDOT), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, City of Austin, and Corpus Christi Regional Transportation Authority. Each certifying entity will maintain and process all DBE applications in their designated area throughout the state.
3. A firm must be certified on or before the bid/proposal due date in order for the firm’s proposed work on the particular contract to be credited toward the DBE goal. It is not enough for a certification application to have been submitted by the deadline.



## COUNTING JOINT VENTURES

Joint Ventures do not have to be fifty-one percent (51%) DBE owned in order to be counted toward the participation goal. *Joint ventures that do not include any DBE firms will not count toward the goal.* A joint venture with ownership of DBE partners in any percentage will be counted for that percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, (provided the DBE ownership is real and substantial and the DBEs are performing a commercially useful function).

The required documentation to be submitted to the City, along with the proposal, for Joint Ventures with DBE partners shall include:

- a. The Joint Venture Agreement for the specific contract including a detailed statement of ownership.
- b. Corporate resolutions or other documents authorizing the firms to enter into the Joint Venture.
- c. A description of the work to be performed by all the Joint Venture Partners.
- d. Proof of current certification status of the individual DBE venture partners.

## GOOD FAITH EFFORTS

The proposer shall demonstrate, to the satisfaction of the DBE Liaison that genuine efforts have been made to achieve the DBE goal. The requirements for demonstrating “good faith efforts” are set forth as follows:

1. Written notices to DBEs contacted by the proposer for specific scopes of work identified by the proposer for subcontracting opportunities not less than five (5) business days prior to bid due date. Such notices shall include information on the plans, specifications and scope of work, including the deadline for submission of interest in teaming;
2. Attendance at a pre-bid conference, if any, scheduled by the City to inform DBEs of subcontracting opportunities under a given solicitation.
3. Efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goals.
4. For those DBES responding affirmatively in writing to the notice required by Item 1 above,
  - (a) reasons why agreements were not reached, including written explanation for rejection of bids;
  - (b) if additional elements of work have been identified by the proposer as available for subcontracting, the proposer shall contact the Department of Economic Development or the Aviation’s DBE Liaison to ascertain the availability of DBE firms in those areas.
5. Efforts to assist DBE contractors with bonding, insurance, and financing, where appropriate.
6. Seeking the assistance of the Aviation’s DBE Liaison or the Department of Economic Development in contacting DBEs.
7. A proposer shall commit to the minimum percentage of DBE utilization as submitted with its bid/proposal on this contract. During the term of this contract, any unjustified failure to comply with the level of DBE participation identified in the bid/proposal shall be considered a material breach of contract.
8. If the proposer is a certified DBE and the DBE proposer intends to perform a portion of the work with its own work force, the DBE proposer must identify the work specifically by type and dollar value and must perform the work indicated with its own work forces in order to have that work counted toward the goal. (Even though the proposer is a certified DBE does not relieve the DBE proposer of the responsibility to make good faith efforts.)

9. In addition, all proposers will be required to submit the following information with the bid:
- (a) The names and addresses of DBE firms that will participate in the contract;
  - (b) A description of the work that each DBE will perform
  - (c) The dollar amount of the participation of each DBE firm participating
  - (d) Written documentation of the proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
  - (e) Written confirmation from the DBE that it is participating in the contract as provided in the proposer's commitment.

## **DBE UTILIZATION FORMS**

**1. All Proposers must submit the following form with the Proposal AT THE TIME OF THE PROPSAL DATE, regardless of whether or not is has met the DBE goal for said project:**

- a. San Antonio International Airport DBE *Good Faith Effort Plan for Federally Funded Contracts (DBE Form 1)***

**If the above referenced form is not completed and signed by the proposer or said form is not received by the City at the time of the proposal date, the proposal will be considered non-responsive.**

**2. Letter of Intent**

- a. The apparent successful proposer for professional services contracts shall submit a Letter of Intent **(DBE Form 2)** for all firms to be utilized on this contract to the Aviation Department's DBE Liaison Officer within seven business days from the date a contract is negotiated. **If the Aviation Department does not receive DBE Form(s) 2 for all firms to be utilized on this contract from the apparent successful proposer within seven (7) business days from the date a contract is negotiated, then apparent successful proposer's Good Faith Effort Plan will not be approved. An approved Good Faith Effort Plan is required prior to award of any contract.**
3. If the proposer wishes to add, delete, and/or to substitute any subcontractor/supplier and/or to modify the work/dollar values after the bid due date or after the contract negotiation date for proposers, the proposer must submit a Change of Subcontractors/Suppliers form (DBE Form 3) and Letter of Intent (DBE Form 2) form(s) for the additional/substitute subcontractor/supplier to the Aviation Department DBE Liaison Office for written approval in advance. The contractor proposer must provide additional documents and information if requested by the Aviation Department. The documentation shall include the specific reasons for the proposed change.

If the change involves a subcontractor/supplier substitution, the contractor/ proposer must make a good faith effort to replace one DBE firm with another DBE firm. The substitute DBE firm must be certified by one of the certifying entities of the TUCP in order for the contractor proposer to receive credit toward fulfilling its DBE participation goal for the contract. In the event that the contractor proposer is unable to contract with another DBE firm, good faith effort documentation must be provided to the Aviation Department DBE Liaison describing the unsuccessful attempts to locate a substitute DBE firm. In all situations, no additional and/or substitute

subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.

4. The City may withhold payment on invoice line items to the contractor for contractor's failure to receive the prior written consent from the City for any changes to subcontractors and/or suppliers as reflected on contractor's approved Good Faith Effort Plan (DBE Form 1) and/or Letter of Intent (DBE Form 2).

## **EVALUATION OF GOOD FAITH EFFORTS**

The good faith effort of a proposer will be evaluated by the DBE Liaison to determine whether the efforts to obtain DBE participation were those that a firm seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable prospect of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

The following is a list of types of actions, which the DBE Liaison may consider as part of the proposer's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

### **Criteria used to evaluate "Good Faith Efforts" are as follows:**

1. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal conferences, advertising and/or written notices) the interest of certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- 4.(a) Negotiating in good faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to DBE subcontractors and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and/or suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (b) A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a prime contractor

failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the prime contractor of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
9. In determining whether a proposer has made good faith efforts, the DBE Liaison may take into account the performance of other proposers in meeting the contract. For example, when the apparent successful proposer fails to meet the contract goal, but others meet it, the DBE Liaison may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful proposer could have met the goal. If the apparent successful proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other proposers, the DBE Liaison may view this, in conjunction with other factors, as evidence of the apparent successful proposer having made good faith efforts.

## **RECONSIDERATION MECHANISM**

The Aviation Department's DBE Liaison will evaluate the "good faith efforts" of a firm. If after reviewing the good faith efforts submitted by Proposer, the DBE Liaison determines that the Proposer has failed to adequately document its good faith efforts, then the Proposer shall have the opportunity to provide written documentation or argument, to the Aviation Director, concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Proposer will have the opportunity to meet in person with the Aviation Director to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Aviation Director will provide a written decision on reconsideration explaining the basis of his decision. In cases of dispute, the final decision in determining whether Good Faith Efforts have been made rests with the Aviation Director.

The Aviation Director may determine that the efforts of the Proposer substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and the City. However, if the Aviation Director determines that the Proposer did not make good faith efforts to meet the goal, the decision is not administratively appealable to the Department of Transportation

## COMPLIANCE

If a proposer is awarded a contract:

1. The proposer must not terminate for convenience a DBE subcontractor (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the City's prior written consent. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the proposer must notify the City immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.
2. The Proposer will be required to make good faith efforts to find another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the City has established for this contract. The Proposer will be required to obtain the DBE Liaison's prior approval of the substitute DBE, through the submittal of Change of Subcontractors/Suppliers (DBE Form 3) and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the Proposer fails or refuses to comply in the time specified, our office may issue a termination for default.

## PROMPT PAYMENT

The Prime Contractor agrees to pay each subcontractor under this contract for satisfactory performance of its subcontract **no later than thirty (30) days** from the date that the prime contractor has been paid by the City for invoices submitted for performance of subcontractor's work. A delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of San Antonio. This clause applies to both DBE and non-DBE subcontractors.

## RETAINAGE PAYMENTS

The prime contractor agrees to provide subcontractor prompt and full payment of retainage within 30 days after the subcontractor's work is satisfactorily completed. In the event that the prime contractor does not provide the subcontractor prompt and full payment of retainage within 30 days, the City may elect to decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage for subcontractors.

For purposes of payments (prompt and retainage), a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Any delay or postponement of payment by the prime contractor, may take place only for good cause, with the City's prior written approval. The Proposer will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. Those mechanisms will be provided to the City for its review prior to the start of the contract.

## **PAYMENT VERIFICATION**

The prime contractor shall submit a City of San Antonio Disadvantaged Business Enterprise Subcontractor/Supplier Activity and Expenditures Report to the project manager and/or contract administrator no later than the 10<sup>th</sup> calendar day of each month. The report shall be in the format required by the City and shall include all awards and payments to subcontractors/suppliers for goods and services provided under the agreement during the previous month. This report may be used by the City to verify utilization of and payment to DBEs.

The prime contractor and any subcontractor whose contracts are being counted toward the DBE requirement shall allow the City access to records relating to the contract, including but not limited to, subcontracts, payroll records, tax information and accounting records, for the purpose of determining whether the DBEs are performing the scheduled work.

## **CONTRACT REQUIREMENTS**

The goals on this contract shall also apply to amendments that require work beyond the scope of services originally required to accomplish the project. The prime contractor is asked to make “good faith efforts” to obtain DBE participation for additional scope(s) of services. Amendments that do not alter the type of service originally required to accomplish the project may be undertaken using the subcontractor and suppliers already under contract to the prime contractor. Any amendment affecting the scope of service or value of the contract should be documented on a form acceptable to the City.

**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)  
DBE GOOD FAITH EFFORT PLAN FOR FEDERALLY FUNDED CONTRACTS  
(DBE FORM 1)**

**NAME OF PROJECT:** AIRFIELD LIGHTING SYSTEM UPGRADE AT SAN ANTONIO INTERNATIONAL AIRPORT

**PROPOSER INFORMATION:**

Name of Proposer: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Is your firm certified? ☐ Yes ☐ No Type of Certification: ☐ DBE ☐ MBE ☐ WBE ☐ AABE ☐ SBE

Age of Firm (Number of Years in Business): \_\_\_\_\_ years

Annual Gross Receipts of the Firm: ☐ Less than \$500,000 ☐ \$500,000 to \$1 million  
☐ \$1 million to \$2 million ☐ \$2 million to \$5 million  
☐ Over \$5 million

1. List **ALL SUBCONTRACTORS/SUPPLIERS** that will be utilized on this contract. **The apparent successful proposer for professional services contracts** shall submit a Letter of Intent (DBE Form 2) for all firms to be utilized on this contract to the Aviation Department's DBE Liaison Officer within seven business days from the date a contract is negotiated. **If the Aviation Department does not receive completed copies from the apparent successful proposer within seven (7) business days from the date a contract is negotiated, then apparent successful proposer's Good Faith Effort Plan will not be approved. An approved Good Faith Effort Plan is required prior to award of any contract.**

Name & Address of Company	Scope of Work/Supplies to be Performed/ Provided by Firm	Estimated Contract or % Level of Participation	If Firm is DBE Certified, Provide Certification Number	Date Written Notice Was Sent and Method (Letter, Fax, E-mail)
1.				
2.				
3.				
4.				
5.				

(Use Additional Sheets if Necessary)

2. List all firms you contacted with subcontracting/supply opportunities for this project that will not be utilized for this contract by choice of either the proposer, subcontractor, or supplier. ***Written notices to firms contacted by the proposer for specific scopes of work identified for subcontracting/supply opportunities must be provided to***

***subcontractor/supplier not less than five (5) business days prior to bid/proposal due date.*** The following information is required for all firms that were contacted of subcontracting/supply opportunities:

<b>Name &amp; Address of Company</b>	<b>Scope of Work/Supplies to be Performed/ Provided by Firm</b>	<b>Estimated Contract Amount or % Level of Participation</b>	<b>If Firm is DBE Certified, Provide Certification Number</b>	<b>Date Written Notice Was Sent and Method (Letter, Fax, E-mail)</b>	<b>Reason Agreement Was Not Reached</b>
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

(Use additional sheets as needed)

In order to verify a proposer's good faith efforts, it may be necessary to provide the City with copies of the written notices to all firms contacted by the proposer for specific scopes of work identified in relation to the subcontracting/supply opportunities in the above named project. If requested by the DBE Liaison, copies of said notices must be provided to the DBE Liaison within five (5) business days of such request. Such notices shall include information on the plans, specifications and scope of work.

3. Did you attend the pre-proposal conference scheduled by the City for this project? \_\_\_\_\_ Yes \_\_\_\_\_ No
4. List all DBE listings or directories, contractor associations, and/or any other associations utilized to solicit DBE subcontractors/suppliers:  
 \_\_\_\_\_  
 \_\_\_\_\_
5. Discuss efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goal:  
 \_\_\_\_\_  
 \_\_\_\_\_



6. Indicate advertisement mediums used for soliciting bids from DBEs. (Please attach a copy of the advertisement(s):

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7. Discuss efforts made to assist interested DBEs in obtaining bonding, lines of credit, or insurance:

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8. Discuss efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services:

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9. Name and phone number of person appointed to coordinate and administer the Federal DBE Good Faith Efforts of your company on this project.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

10. The Good Faith Effort Plan for Federally Funded Contracts must be approved by the Aviation Department's DBE Liaison Officer prior to award of contract.

11. The Federal DBE Good Faith Efforts Plan is subject to the review by the Aviation Department's DBE Liaison and final approval in determining whether Good Faith Efforts have been made rests with the Aviation Director.

#### **AFFIRMATION**

*I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

NAME AND TITLE OF AUTHORIZED OFFICIAL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

#### **FOR SAN ANTONIO INTERNATIONAL AIRPORT USE ONLY:**

Plan Reviewed by \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of DBE Liaison

Recommendation: Approval: \_\_\_\_\_ Denial: \_\_\_\_\_

Action Taken: Approved: \_\_\_\_\_ Denied: \_\_\_\_\_

**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)  
LETTER OF INTENT  
FOR FEDERALLY FUNDED CONTRACTS  
(DBE FORM 2)**

The requirements of 49 CFR Part 26 (Section 26.53), of the U.S. Department of Transportation, requires that all proposers comply with good faith efforts requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the proposers to submit the following information from each Subcontractor/Supplier for this contract (as listed on Item 1 of DBE Good Faith Effort Plan for Federally Funded Contracts [DBE Form 1]):

**NAME OF PROJECT:** AIRFIELD LIGHTING SYSTEM UPGRADE AT SAIA

Name of Proposer's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of Subcontractor/Supplier: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Is the above firm Certified: Yes \_\_\_\_\_ No \_\_\_\_\_ If certified, Certification No: \_\_\_\_\_

Type of Certification: \_\_\_\_\_ DBE \_\_\_\_\_ MBE \_\_\_\_\_ WBE \_\_\_\_\_ AABE \_\_\_\_\_ SBE

If firm is certified, please attach a copy of the Certification Affidavit with this form.

Age of Firm (Number of Years in Business: \_\_\_\_\_ Years

Annual Gross Receipts of the Firm: ☐ Less than \$500,000 ☐ \$500,000 to \$1 million  
☐ \$1 million to \$2 million ☐ \$2 million to \$5 million ☐ Over \$5 million

NAICS Code and/or Description of work to be performed by firm: \_\_\_\_\_

The proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

## Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_

Signature of Firm's Representative

Date \_\_\_\_\_

Title: \_\_\_\_\_

*Submit this page for each Subcontractor/Supplier for this contract, as listed on Item 1 of DBE Good Faith Effort Plan for Federally Funded Contracts [DBE Form 1]*

**SAN ANTONIO INTERNATIONAL AIRPORT  
CHANGE OF SUBCONTRACTORS/SUPPLIERS ON FEDERALLY FUNDED CONTRACTS  
(DBE FORM 3)**

**NAME OF PROJECT:**    AIRFIELD LIGHTING SYSTEM UPGRADE AT SAIA

Name of Proposer: \_\_\_\_\_

The above named firm requests approval of the following addition(s) and/or deletion(s) of the Subcontractor/Supplier firm(s) to the approved DBE Good Faith Effort Plan for Federally Funded Contracts (DBE Form 1) and Letter of Intent (DBE Form 2) as originally submitted as part of the above referenced project. **No additional and/or substitute subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.**

Delete	Name of Firm	Is firm a Subcontractor or Supplier	Description of Work to be Performed by Firm	Is firm DBE Certified Yes or No?	Total Dollars of Work to be Performed by Firm

REASON(S) FOR REMOVING EACH SUBCONTRACTOR(S)/SUPPLIER(S) LISTED ABOVE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Please indicate the name of the firm(s) you wish to add or substitute. **A Letter of Intent (DBE Form 2) for any additional/substitute subcontractor(s)/supplier(s) must be submitted to the City for approval with this form. No additional and/or substitute subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.**

Add	Name of Firm	Is firm a Subcontractor or Supplier	Description of Work to be Performed by Firm	Is firm DBE Certified Yes or No?	Estimated Dollars of Work to be Performed by Firm

1. If a DBE Subcontractor/Supplier was deleted/terminated/replaced, was it replaced with another DBE subcontractor/Supplier? Yes \_\_\_\_ No \_\_\_\_ If not, why not: \_\_\_\_\_
2. If another DBE Subcontractor/Supplier did not replace the DBE Subcontractor/Supplier, please submit for our review the good faith efforts used to find another DBE to perform at least the same amount of work under the contract as the DBE that was deleted/terminated/replaced.

**AFFIRMATION**

*THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

Name & Title of Authorized Official: \_\_\_\_\_

Signature: \_\_\_\_\_ Approved: \_\_\_\_\_ Denied \_\_\_\_\_  
                     AVIATION DEPARTMENT DBE LIAISON

**ATTACHMENT F**  
**DEBARMENT CERTIFICATION**

## ATTACHMENT F

### DEBARMENT CERTIFICATION

\_\_\_\_\_ certifies, and the City relies thereon in execution of this Agreement, that neither \_\_\_\_\_ nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department;

“Principals”, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

\_\_\_\_\_ shall provide immediate written notice to City, in accordance with Article XVIII, Notice, if, at any time during the term of this contract, including any renewals hereof, \_\_\_\_\_ learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

\_\_\_\_\_’s certification is a material representation of fact upon which the City has relied in entering into this Agreement. Should City determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the City may terminate this Agreement in accordance with Article VIII Termination.

Respondent Organization Name (DBA also required if Individual or Proprietorship)

By: \_\_\_\_\_

Signature: \_\_\_\_\_

**ATTACHMENT G**

**INSURANCE REQUIREMENTS**

## **ATTACHMENT G**

### **INSURANCE REQUIREMENTS**

Prior to the commencement of any work under an Agreement awarded pursuant to this RFQ, the selected Respondent shall furnish an original completed Certificate(s) of Insurance to the Aviation Department, Attn: Leslie A. Heinen Jr., P.E., which shall be clearly labeled Airfield Lighting System Upgrade at San Antonio International Airport in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under said Agreement until such Certificate shall have been delivered to the Aviation Department, Attn: Leslie A. Heinen Jr., P.E., and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

Respondent's financial integrity is of interest to the City, and, therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City.

a. Workman's Compensation and Employers' Liability -- \$ \_\_\_\_\_

b. Commercial General (Public) Liability - - to include coverage for the following where the exposure exists: (1) Premises/Operations, (2) Independent Contractors, (3) Products/Completed Operations, (4) Personal Injury, (5) Contractual Liability, (6) Explosion, Collapse and underground property damage ---- Combined Single Limit for Bodily Injury and Property Damage: \$ \_\_\_\_\_

c. Business Automobile Liability Insurance -- to include coverage for: (1) Owned/Leased Automobiles, (2) Non-Owned Automobiles, (3) Hired Automobiles ---- Combined Single Limit for Bodily Injury and Property Damage: \$ \_\_\_\_\_

**d. Because the project will require AOA access the City will require additional general liability insurance - \$ \_\_\_\_\_**

The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies. Respondent shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided by City within ten (10) days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

Respondent agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.

When there is a cancellation, non-renewal or material change in coverage, which is not made pursuant to a request by City, Respondent shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Respondent knows of said change in advance, or ten (10) days notice after the change, if the Respondent did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following addresses:

City of San Antonio  
Risk Management  
Airfield Lighting System Upgrade at SAIA  
P. O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
Aviation Department  
Airfield Lighting System Upgrade at SAIA  
P.O. Box 839966  
San Antonio, Texas 78283-3966

If Respondent fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have and is not the exclusive remedy for failure of Respondent to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time



herein required, the City shall have the right to order Respondent to stop work under the Agreement, and/or withhold any payment(s) which become due to Respondent thereunder until Respondent demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this contract.

**ATTACHMENT H**  
**INDEMNIFICATION REQUIREMENTS**

## ATTACHMENT H

### INDEMNIFICATION REQUIREMENTS

RESPONDENT, if selected, and awarded a contract: covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT's, if selected, activities under this CONTRACT, including any acts or omissions of RESPONDENT, if selected, , any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT, if selected, shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT, if selected, known to RESPONDENT, if selected, related to or arising out of RESPONDENT's, if selected, activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at RESPONDENT's, if selected, cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by RESPONDENT, if selected, to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. RESPONDENT, if selected, further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

**The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

**RESPONDENT, further agrees to include substantially similar language in any and all RESPONDENT subagreements with RESPONDENT subconsultants and RESPONDENT construction contractors that will similarly INDEMNIFY and HOLD HARMLESS the CITY and the elcted officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively.**

**ATTACHMENT I**  
**TITLE VI GRANT ASSURANCES**

## ATTACHMENT I

### TITLE VI GRANT ASSURANCES

During the performance of this CONTRACT, CONSULTANT, for itself, its assignees and successors in interest (hereinafter, collectively, "CONSULTANT") agrees as follows:

- A. Compliance with Regulations. CONSULTANT shall comply with the Regulations of the Department of Transportation (hereinafter "DOT"), Title 49, CFR Part 21, regarding nondiscrimination in federally-assisted programs, as they may be amended from time to time (hereinafter "Regulations"), and which are made a part hereof by reference.
- B. Nondiscrimination. The CONSULTANT, with regard to the work hereunder, shall not discriminate on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate, directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the CONTRACT covers a program set forth in "Appendix B" of the Regulations.
- C. Solicitations for subcontractors, including procurements of materials and equipment. CONSULTANT'S solicitations, either by competitive bidding or negotiation, made for work to be performed under a sub-contract, including procurements of materials or leases of equipment, shall include a notification, to each potential subcontractor or supplier, of CONSULTANT'S obligations hereunder, and the Regulations regarding nondiscrimination on the grounds of race, color or national origin.
- D. Sanctions for Noncompliance. In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this CONTRACT, the CITY shall impose such CONTRACT sanctions as it or the Federal Aviation Administration (hereinafter "FAA") may deem appropriate, including, but not limited to:
  - 1. Withholding of payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies; and/or
  - 2. Cancellation, termination, or suspension of the CONTRACT, in whole or in part.
- E. Incorporation of Provisions. CONSULTANT shall include the provisions of Paragraphs A through E, above, in every subcontract pertaining to this Agreement, including procurements of materials and leases of equipment issued pursuant thereto. CONSULTANT shall take such action with respect to any subcontract or procurement, as the sponsor or the FAA may direct as means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, a subcontractor or supplier as a result of such direction, CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY. Additionally, CONSULTANT may request the U.S. to enter into such litigation to protect the interests of same.

**ATTACHMENT J**  
**SIGNATURE PAGE**

## ATTACHMENT J

### SIGNATURE PAGE

“✓” Check box that indicates business structure of Respondent

- ☐ Individual or Proprietorship
- ☐ Partnership or Joint Venture
- ☐ Corporation

The undersigned certifies that (s)he is \_\_\_\_\_ (title) of the Respondent entity named below; that (s)he is designated to sign this Response Form (if a Corporation then by resolution with Certified Copy of resolution attached) for and on behalf of the entity named below, and that (s)he is authorized to execute same for and on behalf of and bind said entity to the terms and conditions provided for in the Response as required by this RFQ, and has the requisite authority to execute an Agreement on behalf of Respondent, if awarded, and that the 11-digit Comptroller's Taxpayer Number for the entity is:

\_\_\_\_\_  
11-digit Comptroller's Taxpayer Number

\_\_\_\_\_  
Respondent Organization Name (DBA also required if Individual or Proprietorship)

By: \_\_\_\_\_

By: \_\_\_\_\_

(If Respondent is a Joint Venture, an authorized signature from a representative of each party is required)

\_\_\_\_\_  
Employer Identification Number

By signature above, Respondent agrees to the following:

1. If awarded a contract in response to this RFQ, Respondent will be able and willing to execute a contract in substantial form shown in the RFQ, as attached and set out in Attachment L, with the understanding that the scope and compensation provisions will be negotiated and included in the final document.
2. If awarded a contract in response to this RFQ, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in Attachments F & G.
3. If awarded a contract in response to this RFQ, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's Response and during Response process.
4. Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of Response from consideration.
5. Respondent agrees to fully and truthfully submit a General Questionnaire and with understanding failure to fully disclose requested information may result in disqualification of Response from consideration or termination of contract, once awarded.



**ATTACHMENT K**  
**RESPONSE CHECKLIST**

## ATTACHMENT K

### RESPONSE CHECKLIST

This checklist is to help the Respondent ensure that all required documents have been included in its response.

Document	Check or Initial Indicate Document is Attached to Response
Respondent Qualification General Questionnaire (Attachment A in RFQ)	
*Discretionary Contracts Disclosure (Attachment B in RFQ)	
Litigation Disclosure (Attachment C in RFQ)	
*Good Faith Effort Plan (Attachment D in RFQ)	
DBE Policy (Attachment E in RFQ)	
*Debarment Certification (Attachment F)	
References and Qualifications (Response Requirements Section in RFQ)	
*Signature Page (Attachment J in RFQ)	
Response Checklist (Attachment K in RFQ)	
10 Copies of Response	

**\*Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of Response.**

**ATTACHMENT L**  
**DRAFT CONTRACT**

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ENGINEERING SERVICES**

**STATE OF TEXAS**

**COUNTY OF BEXAR**

**AGREEMENT FOR  
  
AIRFIELD LIGHTING SYSTEM UPGRADE  
AT  
SAN ANTONIO INTERNATIONAL**

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as “**CITY**”), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_, passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ and \_\_\_\_\_, by and through its \_\_\_\_\_ (hereinafter referred to as “**CONSULTANT**”), both of which may be referred to herein collectively as the “**PARTIES**”.

**IN CONSIDERATION** of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **CONSULTANT** do hereby agree as follows:

**I. DEFINITIONS**

As used in this AGREEMENT, the following terms shall have meanings as set out below:

1.1 “Director” means the director of **CITY**’s Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 “Project” means the capital improvement/construction development undertaking of **CITY** for which **CONSULTANT**’s design services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 “Ab Initio” means from the beginning; from the first act; from the inception. *See Black’s Law Dictionary, 5<sup>th</sup> Ed., © 1983.*

1.4 “Respondeat Superior” means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black’s Law Dictionary, 5<sup>th</sup> Ed., © 1983.*

## **II. PERIOD OF SERVICE**

This AGREEMENT shall take effect on the eleventh (11<sup>th</sup>) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services.

## **III. SCOPE OF SERVICES**

3.1 **CONSULTANT** shall not commence work until **CONSULTANT** has been thoroughly briefed on the scope of Project, and has been notified in writing by Director to proceed. **CONSULTANT** shall provide a written summary of the scope meeting, including a description of the Project's scope and **CONSULTANT's** services required by said scope. Should the scope subsequently change, either party may request a review of the anticipated services, with an appropriate adjustment in fees; however, such adjustment cannot exceed the maximum allowed for additional services in Article V, Compensation, and cannot substantially alter the original scope of this AGREEMENT.

3.2 **CONSULTANT**, in consideration for the compensation herein provided, shall render the professional services necessary for the development of the Project to substantial completion, including plans and specifications, construction services and any special and general conditions and instruction to bidders as acceptable to Director.

3.3 **CONSULTANT** shall be represented by a professional engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings and other meetings as may be required by the Project development process. All design submittals shall carry the signature and seal or, in the case of progress, or incomplete submittals, an appropriate disclaimer with the professional engineer's name and license number, with the date of the submittal adjacent thereto of a licensed professional engineer.

3.4 **CONSULTANT** shall complete the work listed in this Article III "Scope of Services", including all attachments hereto, in accordance with the Production Schedule in Attachment "B" of this AGREEMENT. Director may, in writing, extend any delivery dates contained in said Attachment "B", Production Schedule, as requested by **CONSULTANT**.

It is agreed to and understood that this contract includes only the assessment phase of the Project. Should the City elect to proceed with the Project, a detailed scope of services and fees will be negotiated based on the selected alternative(s) and this contract will be amended by City Council action. Upon approval by City Council and upon written authorization to proceed, the Consultant shall initiate the Design Phase.

3.5 Upon acceptance and approval of the plans, reports or other producibles required for a phase of work, as set forth in the Scope of Services, Director shall authorize **CONSULTANT**, in writing, to proceed with the next phase of work.

3.6 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by this Scope of Services.

3.6.1 ATTACHMENT “A” - (Scope of Services)

3.6.2 ATTACHMENT “B” – (Production Schedule)

3.6.3 ATTACHMENT “C” – (Consultant’s Fee Proposal and SBEDA Participation Statement From Consultant’s Interest Statement)

#### **IV. COORDINATION WITH THE CITY**

4.1 **CONSULTANT** shall hold periodic conferences with Director, so that the project, as developed, shall have the full benefit of **CITY**’s experience and knowledge of existing needs and facilities and be consistent with its current policies and standards. No more than two conferences shall be held per phase, unless otherwise agreed to by Parties. **CITY** shall make available, for **CONSULTANT**’s use, all existing plans, maps, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this AGREEMENT. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY**’s policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT**’s services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT**’s services, or performance, or of any development that affects the scope or timing of **CONSULTANT**’s services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY**’s use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled “Compensation”.

#### **V. COMPENSATION**

5.1 For and in consideration of the services to be rendered by **CONSULTANT**, **CITY** shall pay **CONSULTANT** the fee set forth in this Article V, Compensation. **CITY** may request **CONSULTANT** to perform an engineering study to refine the Project scope. Payment for such a study will be negotiated in accordance with Article V, Section 5.5 herein.

5.2 Nothing contained in this AGREEMENT shall require **CITY** to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this

AGREEMENT. **CITY** shall not be required to make any payments to **CONSULTANT** at any time **CONSULTANT** is in default under this AGREEMENT.

### 5.3 **BASIS FOR COMPENSATION**

A. The total fee for **CONSULTANT**'s base work as defined in the Scope of Services shall be as a lump sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

B. **CONSULTANT** may submit invoices for partial payment prior to submittal of review documents as outlined below. **CONSULTANT** must submit a written progress report detailing work performed for the billing period reflected in the invoice. A partial payment made must be in proportion to the work performed as reflected in the report and approved by Director. Partial payments shall be payable no later than thirty (30) days following acceptance by Director. Partial payments shall not exceed 70% of each phase prior to acceptance of that phase by **CITY**. The balance due for that phase will be paid upon acceptance of the phase by **CITY**. **CITY** shall have no more than 45 days from the date of submittal within which to review and approve or reject said phase. If no action has been taken by Director at the expiration of the 45 day review period, said phase shall be deemed approved. If any phases are authorized to be omitted then the percentage allocation will be applied to the next appropriate phase. Payments shall be made to the **CONSULTANT** in accordance with Attachment C.

5.4 **MODIFICATIONS** - **CONSULTANT** and **CITY** acknowledge the fact that the base fee as determined in section 5.3(A) above has been established predicated upon the total estimated costs of services to be rendered under the AGREEMENT. For additional services, compensation shall be subject to renegotiations in accordance with section 5.5 below.

### 5.5 **COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES**

**CONSULTANT** may be required to perform the additional services listed in 5.5(B) below, subject to appropriations having been made therefore, in connection with this AGREEMENT. Should **CONSULTANT** be directed in writing by Director to perform these services, compensation shall be paid by **CITY** to **CONSULTANT** as authorized in writing by Director, as follows:

A. The basis for compensation for additional services may be in one or more of the following forms:

- (1) Rate for testimony of principals to be negotiated.
- (2) Non-Principal - Salary cost times a multiplier of 2.5 with a stated maximum not to be exceeded.
- (3) Principal – hourly rate set forth in 5.5(D) herein with a stated maximum not to be exceeded.
- (4) Reimbursement of non-labor expenses and **CITY** directed subcontract expenses at invoice cost plus a 15% service charge.

- (5) Lump sum per item of work to be negotiated.
- (6) Lump sum to be negotiated.

B. Additional services include, but are not limited to the following:

- (1) Assistance to **CITY** as an expert witness in any litigation with third parties, arising from the development or construction of the Project including the preparation of engineering data and reports.
- (2) Preparation of plats and field notes for acquisition of property required for the construction of the project.
- (3) Site visits for ROW pin locating and/or setting for utility companies.
- (4) Preparation of applications and supporting documents for governmental grants, loans, or advances in connection with the Project.
- (5) Preparation or review of environmental assessments and impact statements.
- (6) Review and evaluation of the effect on design requirements of the Project of any assessments, statements, or documents prepared by others.
- (7) Assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- (8) Revising previously accepted studies, reports, design documents or AGREEMENT documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards, design criteria or orders enacted subsequent to the preparation of such studies, reports, and documents, or are due to causes beyond **CONSULTANT's** control.
- (9) Preparation of feasibility studies not required in the base AGREEMENT.
- (10) Detailed quantity surveys of materials, equipment and labor during or after construction phase.
- (11) Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions by **CITY** proposed by the CONTRACTOR retained to construct the designed Project; and services after the award of each CONTRACT in evaluating and determining the acceptability of an unreasonable and excessive number of substitutions proposed by CONTRACTOR.
- (12) Services after the completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantee called for in any contract for the Project.
- (13) Additional copies of reports, drawings and specifications over the number specified in the base AGREEMENT.
- (14) Preparation of all documents dealing with 404 permits, highway permits, and railroad agreements.
- (15) Preparation of driveway plats.
- (16) Obtaining Right of Entry Agreements on behalf of **CITY** for driveway penetrations.



(17) Detailed measurements and surveys for exploration for utilities, if required.

(18) Preparation of record drawing after completion of work by CONTRACTOR.

(19) Actual performance of test borings and other soil or foundation investigations and related analysis.

(20) Tree surveys.

C. Salary Cost - Salary cost is defined as the cost of salaries of engineers, draftsmen, stenographers, surveymen, clerks, laborers, etc. for time directly chargeable to the Project, plus customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto.

a. The amount of customary and statutory benefits of all personnel other than Principals of the Consulting Firm will be considered equal to \_\_\_\_% of salaries or wages.

D. Principals of the Consulting Firm - For the purpose of this provision, the Principals of the Consulting Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

Principal Name

Hourly Charge

\$

5.6 MAXIMUM COMPENSATION FOR ADDITIONAL SERVICES – Total cumulative costs for the additional services listed in Section 5.5 or in Article VI below shall not exceed that amount appropriated by CITY as set forth in the ordinance authorizing this AGREEMENT, without prior authorization of the San Antonio City Council by passage of an ordinance therefore.

## **VI. REVISIONS TO DRAWINGS AND SPECIFICATIONS**

**CONSULTANT** shall provide, at no expense to **CITY**, reasonable minor revisions to any phase, whether previously approved and accepted, as may be required to satisfy the scope of services established by this AGREEMENT. Approval of any phase constitutes **CITY's** acceptance of the design presented. After acceptance of each phase of the Project, any revisions, additions, or modifications made at **CITY's** request which constitute a change in the Scope of Services shall be subject to additional compensation to **CONSULTANT** as agreed upon by **CITY**, subject to Article V, Section 5.6 above.

## **VII. OWNERSHIP OF DOCUMENTS**

7.1 **CONSULTANT** acknowledges and agrees that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this AGREEMENT and shall be used as **CITY** desires and shall be delivered to **CITY** at no additional cost to **CITY** upon request or completion or termination of this AGREEMENT without restriction on future use.

7.2 **CONSULTANT** agrees and covenants to protect any and all proprietary rights of **CITY** in any materials provided to **CONSULTANT**. Such protection of proprietary rights by **CONSULTANT** shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to **CITY**. Additionally, any materials provided to **CONSULTANT** by **CITY** shall not be released to any third party without the consent of **CITY** and shall be returned intact to **CITY** upon completion or termination of this AGREEMENT.

7.3 **CONSULTANT** hereby assigns all statutory and common law copyrights to any copyrightable work that was produced from this AGREEMENT to **CITY**, including all moral rights. No reports, maps, documents or other copyrightable works produced in whole or in part by this AGREEMENT shall be subject of an application for copyright by **CONSULTANT**. All reports, maps, project logos, drawings or other copyrightable work produced under this AGREEMENT shall become the property of **CITY** (excluding any instrument of services, unless otherwise specified herein). **CONSULTANT** shall, at its expense, defend all suits or proceedings instituted against **CITY** and pay any award of damages or loss resulting from an injunction, against **CITY**, insofar as the same are based on any claim that materials or work provided by **CONSULTANT** under this AGREEMENT constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

7.4 **CONSULTANT** may make copies of any and all documents and items for its files. **CONSULTANT** shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers, or other persons, subsequent to the completion of the Project. **CITY** shall require that any such change or other use shall be appropriately marked to reflect what was changed or modified.

7.5 Copies of documents that may be relied upon by **CITY** are limited to the printed copies (also known as hard copies) that are sealed and signed by **CONSULTANT**. Files in electronic media format of text, data, graphics, or other types that are furnished by **CONSULTANT** to **CITY** are only for convenience of **CITY**. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

## **VIII. TERMINATION AND/OR SUSPENSION OF WORK**

8.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

## 8.2 Termination Without Cause.

8.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article XVIII, Notice. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

8.2.2 This AGREEMENT may be terminated by **CITY** prior to Director giving **CONSULTANT** written notice to proceed pursuant to Article III, Section 3.1, should Director, at his sole discretion, determine that it is not in **CITY's** best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article XVIII, Notice and shall be effective upon delivery by **CITY** in accordance with Article XVIII.

8.2.3 **CITY** shall equitably compensate **CONSULTANT** in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by **CITY**. **CONSULTANT** shall not, however, be entitled to lost or anticipated profits should **CITY** choose to exercise its option to terminate.

## 8.3 Defaults With Opportunity for Cure.

Should **CONSULTANT** fail to provide the required designs and/or documents required by Article III, Scope of Services by the due dates establish in Article III, Attachment B, Production Schedule, in acceptable form, as indicated in said Scope of Services as approved by Director, same shall be considered a default. However, Parties agree that no default shall be considered to occur where **CONSULTANT's** failure to provide the designs and/or documents is directly caused by the actions of **CITY**. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **CONSULTANT** shall have ten (10) days after receipt of the written notice, in accordance with Article XVIII, Notice, to cure such default. If **CONSULTANT** fails to cure the default within such ten-day cure period, **CITY** shall have the right, without further notice, to terminate this AGREEMENT in whole or in part as **CITY** deems appropriate, and to CONTRACT with another contractor to complete the work required in this AGREEMENT. **CITY** shall also have the right to offset the cost of said new CONTRACT with a new contractor against **CONSULTANT's** future or unpaid invoice(s), subject to the duty on the part of **CITY** to mitigate its losses to the extent required by law.

## 8.4 Termination For Cause. Upon written notice, **CITY** may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

8.4.1 **CONSULTANT** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, **CONSULTANT's** Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

8.4.2 **CONSULTANT** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT, except those events of default for which an opportunity to cure is provided herein; however, if such default as provided in Section 8.3, Defaults with Opportunity for Cure, exceeds the following, same shall be considered an Event for Cause, subject to the remedies as provided herein:

(A) **CONSULTANT** fails to cure a default listed in Section 8.3 within the time period required for cure; or

(B) **CONSULTANT** is in default as provided in Section 8.3 on more than one occasion in any consecutive twelve (12) month period.

8.4.3 **CONSULTANT** attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or

8.4.4 **CONSULTANT** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT's** assets or properties; or

8.4.5 **CONSULTANT** fails to comply materially with the insurance requirements set forth in this AGREEMENT; or

8.4.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT.

8.5 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.

8.6 **Effect of Termination.** Notwithstanding Section 8.3, Defaults with Opportunity for Cure, upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article XVIII, Notice.

8.6.1 Regardless of how this AGREEMENT is terminated, and subject to 8.6.2, **CONSULTANT** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed

or partially completed specifications and reproducibles of all completed or partially completed designs and plans prepared pursuant to this AGREEMENT, documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**, hereunder in accordance with Article VII, Ownership of Documents. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at **CONSULTANT's** sole cost and expense. Payment of compensation due or to become due to **CONSULTANT** is conditioned upon delivery of all such documents.

8.6.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, **CONSULTANT** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this AGREEMENT through the effective date of termination. Failure by **CONSULTANT** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a **Waiver** by **CONSULTANT** of any and all right or claims to collect moneys that **CONSULTANT** may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.

8.6.3 Upon the effective date of expiration or termination of this AGREEMENT, **CONSULTANT** shall cease all operations of work being performed by **CONSULTANT** or any of its subcontractors pursuant to this AGREEMENT.

8.6.4 **Termination not sole remedy.** In no event shall **CITY's** action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of **CITY's** remedies, nor shall such termination limit, in any way, at law or at equity, **CITY's** right to seek damages from or otherwise pursue **CONSULTANT** for any default hereunder or other action.

#### 8.7 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.

8.7.1 **CITY** may suspend this AGREEMENT at the end of any phase for the convenience of **CITY** by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article XVIII, Notice, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT's** receipt of said notice.

8.7.2 **CONSULTANT** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article XVIII, Notice, (citing this paragraph) to **CITY** after the expiration of one hundred

and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

8.8 Procedures for **CONSULTANT** to follow upon Receipt of Notice of Suspension.

8.8.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this agreement and cancel all existing orders and contracts.

8.8.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this agreement prior to the effective date of suspension except as otherwise required by 8.8.3.

8.8.3 All completed or partially completed designs, plans and specifications prepared under this agreement prior to the effective date of suspension shall be prepared for possible delivery to **CITY** but shall be retained by **CONSULTANT** until such time as **CONSULTANT** may exercise the right to terminate.

8.8.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT's** notice of termination, **CONSULTANT** shall submit the above referenced statement showing in detail the services performed under this agreement prior to the effective date of suspension. Nothing in this section 8.8.4 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

8.8.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT's** notice of termination.

8.8.6 Upon the above conditions being met, **CITY** shall pay **CONSULTANT** that proportion of the prescribed fee which the services actually performed under this agreement bear to the total services called for under this agreement, less previous payments of the fee.

8.8.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **CITY**. To this end, **CONSULTANT** understands that failure of **CONSULTANT** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

## IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this AGREEMENT, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY's** Public Works Department and **CITY's** Risk Management Division, and shall be clearly labeled "**AIRFIELD LIGHTING SYSTEM UPGRADE AT SAN ANTONIO INTERNATIONAL AIRPORT**", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY's** Public Works Department and **CITY's** Risk Management Office, and no officer or employee shall have authority to waive this requirement.

9.2 **CONSULTANT's** financial integrity is of interest to **CITY**, therefore, subject to **CONSULTANT's** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **CONSULTANT** shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at **CONSULTANT's** sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$ /\$ /\$
3. 3. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability	<u>Combined Single Limit for Bodily Injury and Property Damage of \$</u> per; General Aggregate limit of \$ occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. a. Owned/Leased Vehicles b. b. Non-Owned Vehicles c. c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$ per occurrence
5. Professional Liability (Claims made form)	\$ per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

9.3 Upon the presentation to CONSULTANT of a written claim against the CITY, which claim is alleged on its face to have arisen from the negligent acts or omissions of CONSULTANT and a written request by the CITY for the same, CONSULTANT shall, without expense to the CITY, make available to the CITY copies of the policies and all endorsements thereto as they apply to the limits required by the CITY solely for the purpose of an *in camera* inspection at CONSULTANT's offices in San Antonio during normal business hours. CITY shall not be entitled to keep copies or images of such policies or endorsements, nor shall CITY be entitled to make written notes memorializing the text or substance of such policies or endorsements.

9.4 CONSULTANT agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- • Name CITY and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;
- • Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;
- • Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY.

9.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by CITY, CONSULTANT shall notify CITY of such and shall give such notices not less than thirty (30) days prior to the change, if CONSULTANT knows of said change in advance, or ten (10) days notice after the change, if the CONSULTANT did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to CITY at the following addresses:

City of San Antonio	City of San Antonio
Aviation Department – Planning & Eng	Risk Management
9800 Airport Blvd.	111 Soledad, Suite 1000
San Antonio, Texas 78216	San Antonio, Texas 78205

9.6 If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become



due to **CONSULTANT** hereunder until **CONSULTANT** demonstrates compliance with the requirements hereof. A stop work order given to **CONSULTANT** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VIII, Section 8.7.

9.7 Nothing herein contained shall be construed as limiting in any way the extent to which **CONSULTANT** may be held responsible for payments of damages to persons or property resulting from **CONSULTANT's** or its subcontractors' performance of the work covered under this AGREEMENT.

9.8 It is agreed that **CONSULTANT's** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this AGREEMENT.

## **X. INDEMNIFICATION**

**10.1 The RESPONDENT, if selected and awarded a contract: covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT's activities under this CONTRACT, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, subconsultant or construction contractor of RESPONDENT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT, known to RESPONDENT, related to or arising out of RESPONDENT's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at RESPONDENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving RESPONDENT of any of its obligations under this paragraph.**

**It is the EXPRESS INTENT of the Parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by RESPONDENT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for**

**in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. RESPONDENT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

**The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

**RESPONDENT further agrees to include substantially similar language in any and all RESPONDENT subagreements with RESPONDENT subconsultants and RESPONDENT construction contractors that will similarly INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively.**

10.2 CONSULTANT shall advise CITY in writing within 24 hours of any claim or demand against CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

10.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **XI. ENGINEER'S LIABILITY**

11.1 Acceptance of the final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, subcontractors, and agents.

11.2 Standard of Care: Services provided by CONSULTANT under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

## **XII. LICENSING**

CONSULTANT shall utilize qualified personnel to complete the work to be performed under this AGREEMENT, and all work performed under this AGREEMENT is to be executed under the direct supervision of a licensed professional engineer as required by state law. Persons retained to perform work pursuant to this AGREEMENT shall be the employees or

subcontractors of **CONSULTANT**. **CONSULTANT** or its subcontractors shall perform all necessary work.

### **XIII. ASSIGNMENT OF RIGHTS OR DUTIES**

13.1 By entering into this AGREEMENT, **CITY** has approved the use of any subcontractors identified in **CONSULTANT's** Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subcontractors as are identified in **CONSULTANT's** Interest Statement.

13.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**. Actual engineering services, those required by law to be performed by a licensed engineer, or services to be performed which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this AGREEMENT may be subcontracted upon the written approval of Director.

13.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

13.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VIII, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

13.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VIII, Termination.

#### **XIV. INDEPENDENT CONTRACTOR**

14.1 **CONSULTANT** covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of **CITY**; that **CONSULTANT** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

14.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **CONSULTANT** or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

#### **XV. EQUAL EMPLOYMENT OPPORTUNITY**

**CONSULTANT** shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

#### **XVI. SBEDA REQUIREMENTS**

16.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

16.2 **CONSULTANT** agrees to implement the plan submitted in **CONSULTANT**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this AGREEMENT, thereby meeting the percentages for participation of those groups as submitted therein. **CONSULTANT** agrees to be in full compliance with this article by meeting the percentages listed in **CONSULTANT**'s Interest

Statement no later than 60 days from the date of execution of this AGREEMENT, and to remain in compliance throughout the term of this AGREEMENT. **CONSULTANT** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, that will meet the percentages submitted in **CONSULTANT's** Interest Statement. Changes in contract value by changes in work orders, AGREEMENT amendments, or use of contract alternatives, which result in an increase in the value of the AGREEMENT by 10% or greater require the **CONSULTANT** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **CONSULTANT's** Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

16.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/WBE's. **CONSULTANT** shall submit annual reports to **CITY's** Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/WBE participation in the AGREEMENT. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **CONSULTANT** is not in compliance with this article, **CITY** shall give notice of non-compliance to **CONSULTANT**. **CONSULTANT** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this AGREEMENT and may subject **CONSULTANT** to any of the penalties listed in **CITY** of San Antonio Ordinance No. 96754, at **CITY's** option. Further, such failure may be considered a default for which **CITY** may terminate this AGREEMENT in accordance with Article VIII, Termination.

16.4 **CONSULTANT** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

16.5 In all events, **CONSULTANT** shall comply with the **CITY's** Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 96754, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

16.6 It is **CITY's** understanding, and this AGREEMENT is made in reliance thereon, that **CONSULTANT**, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to **CITY's** Request for Interest Statement.

16.7 Any work or services subcontracted by **CONSULTANT** shall be by written contract, and unless specific waiver is granted in writing by **CITY**, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractor with the provisions of said contract shall be the responsibility of **CONSULTANT**.

16.8 **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONSULTANT**, for performance or services or payment of fees.

## **XVII. ESTIMATES OF COST**

Because CONSULTANT has no control over the cost of construction labor, materials or equipment or over the construction contractor's methods of determining prices, or over competitive bidding or market conditions, **CONSULTANT's opinions** of probable construction cost provided herein shall be made on the basis of **CONSULTANT's** experience and qualifications and represent **CONSULTANT's** best judgment as a design professional familiar with the construction industry. CONSULTANT cannot and does not guarantee that proposals, bids or the construction cost will not vary from opinions of probable cost prepared by CONSULTANT.

## **XVIII. NOTICES**

Unless otherwise expressly provided elsewhere in this AGREEMENT, any election, notice or communication required or permitted to be given under this AGREEMENT shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

### **If intended for CITY, to:**

City of San Antonio  
Aviation Department – Planning & Engineering  
(To be opened by Addressee only under  
provisions of 49 CFR Part 1520)  
Attn: Mr. Leslie A. Heinen Jr.  
9800 Airport Blvd.  
San Antonio, Texas 78216

### **If intended for CONSULTANT, to:**

## **XIX. INTEREST IN CITY CONTRACTS PROHIBITED**

19.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

19.2 **CONSULTANT** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY's** Ethics Code.

## **XX. SOLICITATION**

**CONSULTANT** warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this AGREEMENT, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

## **XXI. CONTRACT CONSTRUCTION**

All parties have participated fully in the review and revision of this AGREEMENT. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this AGREEMENT.

## **XXII. FAMILIARITY WITH LAW AND CONTRACT TERMS**

**CONSULTANT** represents that, prior to signing this AGREEMENT, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this AGREEMENT, all applicable laws, and all of the terms and conditions of this AGREEMENT.

## **XXIII. APPLICABLE LAW**

This AGREEMENT shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

## **XXIV. VENUE**

The obligations of the parties to this AGREEMENT shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

## **XXV. SEVERABILITY**

In the event any one or more paragraphs or portions of this AGREEMENT are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this AGREEMENT, but such shall be confined to the specific section, sentences, clauses or portions of this AGREEMENT held invalid or unenforceable.

## **XVI. FORCE MAJEURE**

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

## **XVII. SUCCESSORS**

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

## **XXVIII. NON-WAIVER OF PERFORMANCE**

28.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

28.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XXIX. PARAGRAPH HEADINGS**

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

## **XXX. LEGAL AUTHORITY**

The signer of this AGREEMENT for CITY and CONSULTANT each represents, warrants, assures and guarantees that he has full legal authority to execute this AGREEMENT on behalf of CITY and CONSULTANT respectively, and to bind CITY and CONSULTANT to all of the terms, conditions, provisions and obligations herein contained.



### **XXXI. INCORPORATION OF ATTACHMENTS**

CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT “A” - (Scope of Services)

ATTACHMENT “B” – (Production Schedule)

ATTACHMENT “C” – (CONSULTANT’s Fee Proposal and SBEDA Participation Statement from CONSULTANT’s Interest Statement)

ATTACHMENT “D” – (Grant Assurances)

In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail. In the event of a conflict or inconsistency between Attachment “A” and Attachments “B” and/or Attachment “C”, the terms of Attachment “A” shall control over the terms of Attachment “B” and Attachment “C”. In the event of a conflict or inconsistency between Attachment “B” and Attachment “C”, the terms of Attachment “B” shall control over the terms of Attachment “C”.

### **XXXII. CONFIDENTIALITY**

It is the express agreement of the parties that all documentation in any form containing the required examinations, evaluations, and/or recommendations of the CONSULTANT regarding security at San Antonio International Airport will contain Sensitive Security Information (SSI) that is controlled under the provisions of 49 CFR Part 1520 and that NO PART of such documentation containing SSI, examinations, evaluations, and/or recommendations of CONSULTANT may be released without the written permission of the Administrator of the Transportation Security Administration, Washington, DC 20590. It is understood that any unauthorized release may result in civil penalty or other action.

### **XXXIII. RECORDS AND RELEASE OF INFORMATION**

In the course of service under this AGREEMENT, CONSULTANT will have access to certain SSI information, which is protected by Federal statute and regulation. CONSULTANT may also create and maintain records that contain SSI, such as examinations, evaluations, and/or recommendations that relate to aviation security. SSI is specifically defined in 49 CFR 1520.7. CONSULTANT’S principals, employees and sub-consultants are subject to the duties and requirements imposed by 49 CFR Part 1520, Protection of Sensitive Security Information. As such, the CONSULTANT may not publicly disclose SSI in any context, including litigation or pursuant to a state open records act request, without the advance approval of TSA as provided in 49 DFR Part 1520. If a party in a legal proceeding seeks SSI in discovery or otherwise seeks disclosure of SSI from CONSULTANT performing duties under this AGREEMENT, the CONSULTANT must provide immediate notice of the request for SSI to the CITY, who will, in turn, forward the request to TSA.

All records created by CONSULTANT that contain SSI shall be marked with the following legend:

WARNING: THIS DOCUMENT CONTAINS SENSITIVE SECURITY INFORMATION THAT IS CONTROLLED UNDER THE PROVISIONS OF 49 CFR PART 1520. NO PART OF THIS DOCUMENT MAY BE RELEASED WITHOUT THE WRITTEN PERMISSION OF THE ADMINISTRATOR OF THE TRANSPORTATION SECURITY ADMINISTRATION, WASHINGTON D.C. UNAUTHORIZED RELEASE MAY RESULT IN CIVIL PENALTY OR OTHER ACTION. FOR U. S. GOVERNMENT AGENCIES, PUBLIC AVAILABILITY IS DETERMINED UNDER 5 U.S.C. 552.

CONSULTANT'S principals, employees and sub-consultants with access to any information and/or documentation in any form relating to the required examinations, evaluations, and/or recommendations regarding security at San Antonio International Airport shall sign a non-disclosure letter in substantial form and content as Attachment E, and such letter shall be attached to this contract and delivered to the CITY.

All correspondence shall be clearly labeled "To be opened by Addressee only under provisions of 49 CFR Part 1520"

#### **XXXIV. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

\_\_\_\_\_ certifies, and the City relies thereon in execution of this Agreement, that neither \_\_\_\_\_ nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department;

"Principals", for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

\_\_\_\_\_ shall provide immediate written notice to City, in accordance with Article XVIII, Notice, if, at any time during the term of this contract, including any renewals hereof, \_\_\_\_\_ learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

\_\_\_\_\_ certification is a material representation of fact upon which the City has relied in entering into this Agreement. Should City determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the City may terminate this Agreement in accordance with Article VIII Termination.

**XXXV. ENTIRE AGREEMENT**

35.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXXI, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

35.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

**CITY:**

**CONSULTANT:**

**CITY OF SAN ANTONIO**

\_\_\_\_\_  
CITY MANAGER                      DATE

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY                      DATE

ATTEST:

\_\_\_\_\_  
CITY CLERK                      DATE

**ATTACHMENT “A”**  
**SCOPE OF SERVICES**

## ATTACHMENT B

### PRODUCTION SCHEDULE

Project: AIRFIELD LIGHTING SYSTEM UPGRADE AT SAN ANTONIO INTERNATIONAL AIRPORT

Architect/Engineer Firm: \_\_\_\_\_

	<u>SCHEDULED</u>	<u>ACTUAL</u>
<u>Assessment</u>		
Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days
<hr/>		
<u>Preliminary</u>		
Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days
Total Contract Time:	_____ Days	_____ Days
<hr/>		
<u>Design</u>		
Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days
Total Contract Time:	_____ Days	_____ Days

BY: \_\_\_\_\_  
\_\_\_\_\_

## **ATTACHMENT C**

### **CONSULTANT'S FEE PROPOSAL AND SBEDA PARTICIPATION STATEMENT FROM CONSULTANT'S INTEREST STATEMENT**

#### **SECTION 1 – Basis of Compensation**

The total fee for all basic services defined by this contract is to be lump sum in the amount of \$\_\_\_\_\_ and \$\_\_\_\_\_ identified below as allowances, the sum total not to exceed \$\_\_\_\_\_ and it is agreed and understood that this amount will constitute full compensation to the Consultant for these services. This amount has been approved and appropriated by the San Antonio City Council for expenditure under this contract. Unless and until the City sees fit to make further appropriations, the obligation of the City to the Consultant for a Total Fee for all basic services and approved allowances in connection with this Agreement cannot and will not exceed the sum of \$\_\_\_\_\_ without further amendment to this contract.

For the purpose of establishing fees for separate tasks, the following allocations of the scheduled fees apply:

#### **SECTION 2 – Changes**

The consultant and the City acknowledge the fact that the Total Fee amount contained in Section 1 above has been established, predicated upon the total estimated costs of basic services to be rendered under this contract. For additional services, if the scope of services is changed materially, compensation shall be subject to renegotiation.

#### **SECTION 3 – Methods of Payment**

The consultant and the City agree and acknowledge the fact that payment will be made on approved invoices reflecting the work completed and accepted for the various tasks. The Consultant may, upon written authorization from the Director, request partial payments for work performed for the various tasks upon the furnishing of satisfactory evidence of the partial completion of the work.